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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MYONG HUI KIM,

Plaintiff and Appellant,

v.

MI HEE SUNG,

Defendant and Respondent.

B286742

(Los Angeles County
Super. Ct. No. BC603506)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael M. Johnson, Judge. Affirmed.

Kevin H. Jang for Plaintiff and Appellant.

Law Offices of Jason J. Chong and Jason J. Chong for
Defendant and Respondent.

INTRODUCTION

Appellant sued her coworker for defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress, after the coworker “falsely accus[ed]” appellant of having threatened to set fire to the building where they worked. At the conclusion of appellant’s case-in-chief, the trial court granted respondent/coworker’s motion for nonsuit. Appellant contends the trial court committed reversible error in granting the motion. Because the appellant has not provided adequate legal authority and analysis to support her contention, and has failed to provide any citation to the record, we are unable to evaluate her claim. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 8, 2015, appellant, Myong Hui Kim (hereinafter Kim) filed a civil action against her coworker, Mi Hee Sung (hereinafter Sung) alleging defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress. Kim’s three causes of action arose from a series of events occurring between February 25, 2015 and March 27, 2015. These events involved Kim, Sung, and the president of their employer company Best Customs Service. Because Kim has failed to include the operative complaint in the clerk’s transcript on appeal, we glean these facts from the reporter’s transcript of the trial.

On February 25, 2015, Kim walked into her place of employment and noticed “the lights were turned on” in the president’s office, even though he had not yet arrived at work that morning. Kim asked respondent Sung, who was at the workplace when Kim arrived, who turned the lights on.

According to Kim, Sung answered in an “irritated manner” that the president wanted the office lights on during business hours and was complaining that “people here [do] not listen to what the president [says].” Sung then allegedly threatened Kim and asked if she “would . . . like to become like Jenny,” a former coworker who, according to Kim, was fired as a result of Sung’s false accusations. Sung then “falsely accused [Kim] to the manager and the president stating that [Kim] was going to set a fire.”

Sung testified to a different version of events. According to Sung, Kim had told her, “Today is the date that . . . I’ll set a fire. I cannot put up with this anymore. I think I’ll put an end to it today. You find out later [*sic*].” However, after discussing the incident with their boss, they “quashed it the next day” and “[n]othing happen [*sic*] in the workplace for over a month.” “[A]ll of a sudden, a month later,” on March 27, 2015, Kim went into the boss’s office and said, “I’m going to quit. I don’t want to work here anymore. I’m going to quit in 30 days. I’m going to quit at the end of April.” Their boss stated “if that’s what [she] want[s] to do, that’s fine.” Sung contends Kim was terminated shortly thereafter because their boss received a report that Kim was “calling clients saying, ‘Hey, I’m going to move. Will you come with me?’ ”

In her complaint, Kim alleged that Sung’s “false statements” to management about Kim threatening to burn the building were defamatory and “resulted in the termination of [her] employment and emotional distress to her.” Kim sought “money damages for lost earnings, harm to her reputation, medical expenses, and [damages for] emotional distress.”

In contrast to the allegations of her complaint, Kim testified at trial that “[o]n the 25th of March 2015, [she] texted [the] president” and stated that she “must see” the company’s video surveillance recording of the area where Kim and Sung argued about the president’s office lights on February 25, 2015, and when Kim allegedly had threatened to burn down the building. Notably, Kim testified that “because of *that*, [she] got fired on the 26[th] of March.” (Italics added.)

Kim ran out of witnesses at 2:30 p.m. on the second day of trial and asked to recess early so her two remaining witnesses could appear the next day. The trial court asked Kim for an offer of proof of the testimony of her remaining witnesses. Upon hearing the proffer, the trial court stated it had yet to hear evidence that the allegedly defamatory statement about starting a fire was the cause of Kim’s termination. The trial court ruled that Kim’s proffer did not supply the missing link of causation.

The trial court then deemed Kim to have rested. The trial court considered Sung’s oral motion for nonsuit brought because Kim’s “own words . . . totally discredit . . . the allegations in [her] complaint.” Kim herself had testified that her request for the video surveillance caused her to get fired, not Sung’s false accusation that Kim had threatened to burn down their workplace.

The trial court granted the motion for nonsuit and dismissed the complaint with prejudice. Among other findings, the court determined: “I don’t see any evidence that supports [Kim]’s position that she lost her job and her life was unalterably changed because of this statement about a fire.” The court further stated: “I’ve considered the testimony that’s been given thus far and I find that the plaintiff has not satisfied the prima

facie elements of defamation or, for that matter, the emotional distress claims because of the lack of causation. [¶] The whole theory of the case is that [Kim] lost her job because of a statement that . . . she had threatened to start a fire. And there's no evidence of that. All we've heard is [Kim]'s own speculation as to why she lost her job.”

The trial court entered judgment in favor of Sung.
Kim timely appealed.

DISCUSSION

We are unable to address the points raised in Kim's opening brief because the briefing fails to pass muster in two important ways. First, the brief contains not a single citation to the record. Second, Kim fails to demonstrate any reversible error, as she provided little to no background information, no fact-specific contentions, and no legal authority to support her general proposition that the trial court erred in granting the motion for nonsuit. Accordingly, we affirm the trial court's judgment.

A. *Standard of Review*

A defendant may move for a judgment of nonsuit after a plaintiff “has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury.” (Code Civ. Proc., § 581c, subd. (a).) “Such a motion has the effect of a demurrer to the evidence: It concedes the truth of the facts proved and contends that those facts are not sufficient as a matter of law to sustain the plaintiff's case.” (*Alpert v. Villa Romano Homeowners Assn.* (2000) 81 Cal.App.4th 1320, 1328.) In ruling on the sufficiency of the evidence, the trial court “‘must resolve all presumptions, inferences, conflicts, and doubts in

favor of the plaintiff. If the plaintiff's claim is not supported by substantial evidence, then the defendant is entitled to a judgment as a matter of law, justifying the nonsuit.' ” (*Hernandezcueva v. E.F. Brady Co., Inc.* (2015) 243 Cal.App.4th 249, 257.) “We review rulings on motions for nonsuit de novo, applying the same standard that governs the trial court.” (*Ibid.*)

B. *Kim failed to provide citations to the record.*

“An appellant must support his [or her] argument in the briefs by appropriate references to the record, which includes providing exact page citation.” (*Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140.) An appellant's brief must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.” (Cal. Rules of Court, rule 8.204(a)(1)(C).) Indeed, “[i]t is axiomatic that an appellant must support all statements of fact in his [or her] briefs with citations to the record.” (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29.) When a party fails to provide a single citation to the record on appeal to support his or her arguments, we may properly disregard the brief and treat the unsupported issues and/or contentions as waived or forfeited. (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384; *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 589.) “We look askance at this practice of stating what purport to be facts—and not unimportant facts—without support in the record. This is a violation of the rules . . . with the consequence that such assertions will, at a minimum, be disregarded. [Citation.]” (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846; *Mark*

Tanner Construction, Inc. v. HUB Internat. Ins. Services, Inc. (2014) 224 Cal.App.4th 574, 584.)

Kim’s opening brief is devoid of *any* citation to the record and contains a mere one-page recitation of her factual allegations and a half-page recitation of the procedural history of the case, with no citation to either the clerk’s transcript or the reporter’s transcript.

C. *Kim failed to provide relevant facts, legal authority, and analysis to support her argument.*

An appellant who does not provide adequate legal authority and analysis to support a contention forfeits that contention. (*Ewald v. Nationstar Mortgage, LLC* (2017) 13 Cal.App.5th 947, 948; *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) Indeed, the cardinal rule of appellate review is that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate court. (*Foust v. San Jose Construction Co, Inc.* (2011) 198 Cal.App.4th 181, 186–187.)

In her brief, Kim states the court “erroneously granted” Sung’s motion for nonsuit and that there were “more evidences and at least two (2) more witnesses to be called” with respect to her claims for defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress. However, she neither describes the elements of any of her causes of action nor provides us with relevant facts satisfying those elements. Neither does she tell us why or how the trial court erred, if that is her contention, when it inquired into the relevance of the two remaining witnesses Kim wanted to call at trial and declined to continue the trial so they could testify. Kim has failed to show

that triable factual issues exist as to any cause of action based on the evidence or proffers provided to the trial court.

To sum up, it is not this court's task to search the record for evidence that supports a party's factual statements, and we may disregard statements not supported by proper citation. (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1310, fn. 3; *Regents of the University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826, fn. 1.) In the absence of cogent arguments based on specific instances of error, supported by citation to the record, we must presume the trial court's order is correct. And that we do.

D. *Sung's request that we sua sponte impose sanctions on Kim is denied.*

Sung requests, by way of her brief, that we sua sponte impose sanctions on Kim "for taking a frivolous appeal or appealing solely to cause delay." We decline to do so.

DISPOSITION

The judgment is affirmed. Respondent is to recover her costs on appeal.

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STRATTON, Acting P. J.

We concur:

WILEY, J.

ADAMS, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution